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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,834	02/02/2004	Nikolai M. Krivitski	86017.000038	9076
23387	7590	06/11/2009		
Stephen B. Salai, Esq. Harter Secrest & Emery LLP 1600 Bausch & Lomb Place Rochester, NY 14604-2711			EXAMINER WINAKUR, ERIC FRANK	
			ART UNIT	PAPER NUMBER
			3768	
			MAIL DATE	DELIVERY MODE
			06/11/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10769834	2/2/04	KRIVITSKI ET AL.	86017.000038

EXAMINER

Eric F. Winakur

ART UNIT PAPER

3768 20090605

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The amendment filed on 2/28/09 again presents at least claims 1 and 16 and those that depend therefrom to inventions which are not readable on the originally elected invention of the instant application, and therefore is non-responsive (MPEP § 821.03). Applicant notes the passages of the specification referred to in the prior Office communication (paragraphs 0065 and 0066), and alleges that these paragraphs provide for calibration of the blood corresponding to an ultrafiltration rate and that the amended claims now include a limitation regarding this detail and are consistent with the originally set forth claims of the application. However, it is clear from these paragraphs that the calibration is dependent upon "an indicator which dilutes ... the blood" and it is measurement of the diluted blood that is the critical aspect (not the ultrafiltration rate). Without including (that is, restoring) details of the dilution, it is proper to maintain that the amendment is non-responsive, as being directed to a non-elected (by original presentation) embodiment. One cannot conflate diluted blood (as recited in the original claims) with filtered blood (as recited in the amended claims), as these are disclosed and understood to be distinct. Applicant is requested to review the original claims and the amended claims and resolve the differences to present claims consistent with the original scope of the invention. Applicant further alleges that the basis of the restriction in the grandparent case was not between two manners of calibrating. As there were claims directed to only one form of calibration, Applicant's remarks regarding the restriction in the grandparent case are correct. Nonetheless, Applicant has improperly shifted the claim scope in the instant application to an alternate embodiment.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571/272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

